

(5) NOTICE REQUIREMENT.—*The amounts may be obligated or expended only if the Mayor notifies the Committees on Appropriations of the House of Representatives and the Senate in writing 30 days in advance of any obligation or expenditure.*

(6) AVAILABILITY OF FUNDS.—*Funds made available pursuant to this section shall remain available until expended.*

*This Act may be cited as the "District of Columbia Appropriations Act, 2004".*

The Presiding Officer appointed Mr. DEWINE, Mrs. HUTCHISON, Mr. BROWNBACK, Mr. STEVENS, Ms. LANDRIEU, Mr. DURBIN, and Mr. INOUE conferees on the part of the Senate.

#### RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:39 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

#### EXECUTIVE SESSION

##### NOMINATION OF MAJ. GEN. ROBERT T. CLARK TO BE LIEUTENANT GENERAL

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, pursuant to the order of November 14, I ask that the Senate now proceed to executive session to begin consideration of Executive Calendar No. 418, the nomination of Maj. Gen. Robert T. Clark to be Lieutenant General.

The PRESIDING OFFICER. Without objection, the clerk will report.

The assistant legislative clerk read the nomination of Maj. Gen. Robert T. Clark to be Lieutenant General.

Mr. WARNER. Mr. President, there are a number of Senators who desire to speak. I will just say a few words. To accommodate my distinguished colleague from Kentucky, who has been a valiant supporter of this nomination and very persistent over this long period of time, I will yield the floor. He then could be followed by the Senator from Massachusetts and then I would continue my remarks.

I wonder if I just might ask unanimous consent that the Senator from Virginia proceed for not to exceed 3 or 4 minutes, followed by the Senator from Kentucky for about 10 or 12 minutes, followed by the Senator from Massachusetts. How much time does my colleague desire?

Mr. KENNEDY. I think 40 minutes.

Mr. WARNER. Not to exceed a period of about 40 minutes for the Senator from Massachusetts.

Mr. KENNEDY. I think Senator DAYTON also had 15 minutes. I think there is a unanimous consent agreement for this; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. WARNER. I was not able to hear.

Mr. KENNEDY. I think there is a consent that has been agreed to whereby there are 2 hours equally divided, with 40 minutes for myself and 15 minutes for Senator DAYTON.

Mr. WARNER. The Senator is correct on that.

Mr. KENNEDY. I will not necessarily take all of that time.

Mr. WARNER. Mr. President, I thank my colleague.

Major General Clark is a highly qualified officer for promotion to the rank of lieutenant general. I have met with him several times. His proposed assignment by the Secretary of Defense is to be Commander of the Fifth U.S. Army.

He was first nominated for this position in the fall of 2002. He has appeared before the Senate Armed Services Committee in executive session on two separate occasions. On both occasions he conducted himself with deference and respect not only for the serious issues at hand but for all persons involved in this tragic sequence of facts which preceded his nomination.

He expressed great respect for the constitutionally-based advise and consent power and the responsibility of the Senate to look into this nomination with great thoroughness. Not surprisingly, General Clark has the full support of the Chief of Staff of the Army, General Schoomaker, and the civilian leadership of the Army for this promotion. Indeed, the Secretary of Defense personally, in a very respectful way, has talked to me about this nomination and his strong support for this nominee.

I will detail at length later on in the course of this debate the very thorough steps taken by the Senate Armed Services Committee. I commend my colleagues on the committee. There were unusual facts associated with this nomination involving tragic loss of life, a strong disciplinary action against those who brought about the direct harm to the victim who gave his life. In the course of that, I and other members of the committee took it upon ourselves to meet with the family members of the deceased victim in this particular case. I wish to commend them. They handled themselves in a manner of great distinction, given the depth of emotion on their part.

I also commend the former Vice Chief of the Army, General Keane. He took it upon himself time and time again, working with the distinguished Under Secretary of the Army, Les Brownlee, to repeatedly go back and reinvestigate certain aspects of this case, I hope to the satisfaction of all Members, certainly to this Senator and generally members of the committee.

Mr. President, I yield the floor to accommodate my colleague. I again thank him for his strong tenacity in supporting this nomination throughout.

Mr. BUNNING. Mr. President, I rise in strong support of MG Robert Clark to the rank of lieutenant general and

commander of the Fifth Army. I first met General Clark over 5 years ago when he was commander of the 101st Airborne Division at Fort Campbell, KY. Since that time, I have known General Clark to be an honest man and an excellent soldier. The military communities in Kentucky and Tennessee surrounding Fort Campbell admire General Clark very much. He is well respected throughout the Army, and we should be grateful that we have soldiers like General Clark serving and protecting our Nation.

GEN Jack Keane, who commanded General Clark at Fort Campbell, said this about him:

In my 37 years of service, I have never met an officer who is such a tower of character and integrity. His peers, subordinates, and superiors all respect and admire him for the truly special person that he is.

General Clark loves the Army and he loves his country. Some may even say that General Clark was born with the desire to serve his country in his blood. Both of his grandfathers served in both World War I and World War II. His father served for 31 years and fought in both World War II and the Korean conflict. His older brother served in Vietnam. One of his younger brothers is an Air Force colonel, and another brother is an Army lieutenant colonel on the front lines in Korea.

The Clark family has made many sacrifices so that future generations of Americans can live in peace. General Clark has given 33 years of his life in the armed service to this great Nation. He is a decorated soldier and has shed his own blood for our country. He led a platoon in Vietnam, commanded a brigade that was dropped deep into Iraq during Operation Desert Storm.

As commanding general of the 101st Screaming Eagles, he deployed himself, with his troops, all over the world, from Kuwait to El Salvador. Most recently, General Clark has been deputy commander of the Fifth Army and mobilized Guard and Reserves for homeland defense and Operation Iraqi Freedom. He has worn just about every hat the Army has to offer.

COL Mike Oates, who served under General Clark at Fort Campbell, said this about him:

He spoke straight to the soldiers. He looked them in the eye and he set high standards for wearing our equipment and how we behaved. Discipline is what keeps good units effective and reliable. He enforced discipline and set the example himself.

I could go on and on about General Clark's distinguished career. But I need to address the tragic incident that has held up his nomination, which occurred while General Clark was at Fort Campbell. A murder occurred at Fort Campbell on July 5, 1999. PVT Barry Winchell was killed in a tragic event that none of us should ever forget. Private Winchell was murdered by a fellow soldier, who is serving—and deservingly so—a life sentence for this horrendous crime.

I do not wish to address the details of this horrible murder, but I do wish to

extend my thoughts and prayers to Private Winchell's family and friends. I have spoken with General Clark several times about this tragic incident. I know how sorry he is about the murder of Private Winchell, especially since it did happen on his post and under his leadership.

But it is important to note that after the incident—and as the general court martial convening authority—General Clark approved the maximum punishment for the convicted murderer.

I want to set the record straight. A small, yet loud minority has blamed General Clark for this tragic death. Nothing could be further from the truth.

A man who has given 33 years of his life to protect all Americans—all Americans—does not deserve to be treated this way. Army investigations and many interviews were conducted to dispel the misinformation over this incident. And the Army has recommended General Clark for nomination to lieutenant general and commander of the Fifth Army because he is the most qualified soldier for this job.

The President nominated General Clark for this post and important rank. It is important to note that the Senate Armed Services Committee approved his nomination.

I thank Committee Chairman WARNER and Ranking Member LEVIN for helping to move his nomination through the committee.

Mr. President, our military has an old saying: "Not for self, but for country."

Those who know General Clark in the Army and in the communities in which he has served all think of him when they hear this statement. General Clark is a man who has given his entire life not for self but for God and country. I thank him for it.

We should all be grateful to him for all the sacrifices he has made for our freedoms and our protections. I urge my colleagues to support the nomination of GEN Robert Clark. He deserves it and he has earned it.

Mr. President, I yield the floor.

Mr. WARNER. Mr. President, may I express appreciation to my colleague from Kentucky again for his taking long hours to personally look into this case in a very objective way and in reaching his conclusions.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I ask the Chair to remind me when I have used 15 minutes.

The PRESIDING OFFICER. The Chair will do so.

Mr. KENNEDY. Mr. President, I oppose the nomination of Major General Clark to the rank of lieutenant general.

I agree that General Clark has a strong record as a soldier. He has received numerous decorations for his distinguished service and courage, and he has served in a number of leadership

capacities during his more than 30 years in the Army.

I am concerned, however, about General Clark's performance as Commanding General at Fort Campbell, KY, at the time of the brutal murder of PVT Barry Winchell on the base in 1999.

There are few more respected units in the Army than the 101st Airborne Division at Fort Campbell. The "Screaming Eagles," as the division is called, has a well-deserved reputation of professionalism, heroism, and outstanding performance. Yet, in the months leading up to the murder of Private Winchell, the command climate at Fort Campbell was seriously deficient. According to a report by the Army inspector general, Fort Campbell had command-wide low morale, and inadequate delivery of health care to soldiers and their families, and the leadership condoned widespread, leader-condoned underage drinking in the barracks.

There is compelling evidence that anti-gay harassment was pervasive at Fort Campbell during this period. The inspector general reported multiple examples of anti-gay graffiti, the use of anti-gay slurs in cadences by non-commissioned officers during training runs, and routine remarks and bantering that, in the inspector general's words, "could be viewed as harassment." Outside groups have documented many instances of anti-gay harassment in the months leading up to the murder.

The inspector general also found that prior to the murder, there was no sustainment training at Fort Campbell on the proper implementation of the Homosexual Conduct Policy, known as "Don't Ask, Don't Tell" and that, as a result, "most officers, NCOs, and soldiers at Fort Campbell lacked an understanding and working knowledge of the Policy."

In his response to my questions, General Clark stated that he agrees with these findings, but that he was nevertheless not aware of even a single instance of anti-gay harassment before the murder.

On July 5, 1999, after enduring anti-gay harassment for many months, including harassment by members of his chain of command, Private Winchell was bludgeoned to death with a baseball bat by a fellow soldier in his barracks.

It seems clear that if General Clark had exercised his responsibility to deal with the serious anti-gay harassment that was prevalent at Fort Campbell during his 17 months of command leading up to the murder of Private Winchell, the murder would probably not have occurred.

Even more serious, however, was General Clark's performance at Fort Campbell in the days, weeks, and months following the murder. A brutal bias-motivated hate crime is an extraordinary event in any community, civilian or military, and it demands an

extraordinary response from the community's leaders. Such a crime sends the poisonous message that some members of the community deserve to be victimized solely because of who they are. The potential for such a crime was magnified in this case because of the existing climate of anti-gay harassment at Fort Campbell, but the available evidence indicates that General Clark's response was not adequate with respect to his contacts with Private Winchell's family or his command responsibilities at Fort Campbell.

One factual issue which I have repeatedly asked the Army to resolve, without receiving a satisfactory response, is why General Clark did not meet with the parents of Private Barry Winchell, Patricia and Wally Kutteles, in the days following his murder.

Following such a brutal murder it is difficult to believe that such a meeting did not take place. Any responsible and compassionate commanding officer would want to meet with and console the parents of the murdered soldier, even if no request for such a meeting had formally been made.

I understand that during the 4 days immediately following the murder, General Clark was at the Walter Reed Army Medical Center in Washington with his wife, who was undergoing tests for a longstanding illness. It is understandable that General Clark had declined to meet with the parents for this reason, during that period and did not attend the memorial service for Private Winchell on July 9. But Clark did not meet with the parents in the days after his return to Fort Campbell from Walter Reed Hospital nor in the weeks and months that followed the Winchell murder. Instead, he states that he never received a request to meet with the parents, but he would gladly have met with them if he had received a request to do so.

Patricia Kutteles, Private Winchell's mother, has submitted a sworn affidavit stating that she and her husband traveled to Fort Campbell immediately after hearing about her son's murder. She was assigned an Army liaison officer, Lieutenant Colonel Stratis, as their point of contact with Fort Campbell and the Army. Two or three days after the murder, she made a request to Lieutenant Colonel Stratis to meet with General Clark to talk about her son's death. Lieutenant Colonel Stratis told her that General Clark was unable to meet with them.

There are three possible explanations for this dispute of fact: Ms. Kutteles may have submitted a false affidavit, General Clark may have given false information to the Committee, or General Clark was, for some reason, not informed by his staff about the parent's request.

Like others on the Armed Services Committee, I have met with the parents, and I was struck by their sincerity, their patriotism, and their continuing support for our Armed Forces in spite of the tragedy. I find it difficult to believe that they are lying or

mistaken when they say they asked for a meeting with General Clark.

Nevertheless, that appears to be the position of the Army inspector general, who states in his most recent memorandum, dated October 20, 2003, that the mother's statement in the affidavit is "unfounded." The inspector general states that his office "determined, after extensive interviews, none of the key staff members and other relevant witnesses recalled receiving or learning of such a request."

I have seen several of the affidavits relied upon by the inspector general, and I found the statements relied on to be disturbingly non-responsive. These affidavits fail to resolve the serious factual dispute about whether the parents requested a meeting with General Clark, and it seems improper for the Army inspector general to suggest that no such request was made.

I believe that it is inappropriate for the Senate to act on this nomination until this issue is more satisfactorily resolved.

General Clark states that he was not aware of any instance of anti-gay harassment on the base before the murder. At the very least, the murder should have made painfully clear that anti-gay bias and anti-gay harassment were real and pressing problems at Fort Campbell, problems that demanded an immediate and effective response. Yet from the very start, and throughout the remainder of his command, General Clark and his office took patently ineffective steps to respond to these specific problems.

Two days after the murder, the Fort Campbell public affairs office issued a statement describing the incident as a "physical altercation in a post barracks," insinuating that Winchell was partly responsible for his own death. In fact, Winchell was asleep in the barracks when he was attacked by his killer. General Clark stated that he probably learned about the false press statement 3 or 4 days later, following his return to Fort Campbell from the Walter Reed Army Medical Center. He said he did not instruct the public affairs office to retract the statement or issue a correction because "comments by my command spokesperson regarding the case might well have influenced the investigation, or suggested that I had reached premature conclusions about the case, and might have influenced or tainted the deliberations of any soldier serving on a court martial panel."

It is important for a commanding officer not to make statements that might influence an investigation or court-martial. But it is well established in military law that a statement may be made to correct a false public statement, in order to avoid prejudice to the Government or the accused.

General Clark's explanation is doubly unconvincing in the light of the fact that the Fort Campbell public affairs office made a statement, 2 days after Clark returned to Fort Campbell, that

there was "no evidence" that Private Winchell was killed because he was gay. This statement was clearly false, and it also raised a far more serious issue about whether the command at Fort Campbell was undermining the ability of the Government to prosecute the murder as a bias-motivated offense.

In fact, anti-gay harassment continued in the months following the murder.

The continuing anti-gay harassment at Fort Campbell was also accompanied by a sudden exodus of soldiers discharged for violations of the Homosexual Conduct Policy. In the 10 months after the murder, 120 soldiers were discharged from Fort Campbell under this policy, compared to only 6 such discharges from Fort Campbell during the same time period in the previous year. In all of 1999, there were 271 such discharges in the entire Army.

Instead of dealing directly with the problem of anti-gay harassment, General Clark chose to deny that any problem existed. In an op-ed article in the *New York Times*, a year after the murder, he stated that "There is not, nor has there ever been during my times here, a climate of homophobia on post."

In addition, he refused to meet with groups concerned about the welfare of gay soldiers, including a local gay community group, and the Servicemembers Legal Defense Network, a national organization.

Another of General Clark's most serious failures of leadership after the murder is the fact that, from all the evidence we have seen, he did not even once speak out against the specific problems of anti-gay harassment and anti-gay violence, or implement any training for the soldiers against it.

He did take general steps after the Winchell murder to address the quality of life for soldiers at Fort Campbell, and he reinforced existing programs on the need to treat all soldiers with "dignity and respect." These measures were helpful, but hardly sufficient to address the specific problem of anti-gay harassment.

Private Winchell's murder was an anti-gay hate crime, and it called for, at the very least, a clear and unequivocal statement by Fort Campbell's commanding officer that violence against homosexuals is wrong. According to the record, no such statement was ever made.

General Clark has been asked repeatedly for instances in which he spoke publicly about anti-gay harassment. In his response last November 6, 2002 to written questions, he listed a number of speeches, press conferences, and publications, but none of these examples dealt with the specific problem of anti-gay harassment.

For example, General Clark wrote that on January 14, 2000:

I published an article in the post newspaper, *The Fort Campbell Courier*, in which I emphasized the quality of soldiers serving at Fort Campbell, and outlines the initia-

tives we had undertaken to eliminate anti-gay harassment. I also reinforced our longstanding policy of treating all soldiers with dignity and respect.

In fact the article itself contains no information regarding efforts to address anti-gay harassment—not even a statement that such harassment is wrong. The article includes only two references to homosexuality.

First, General Clark writes that he has requested a review and assessment: to determine whether any member of this command violated the Department of Defense Homosexual Conduct Policy in any interaction with PFC Barry Winchell.

Second, he writes that he has:

issued a policy on the handling of discharges for homosexual conduct to ensure these matters preserve the privacy and dignity of individual soldiers.

There is nothing in the article about anti-gay harassment. It deals only with the "Don't Ask, Don't Tell" policy.

The article refers only to General Clark's efforts to improve barracks conditions generally and his "special emphasis" on the dignity of all soldiers. Much of the article is defensive in tone; General Clark writes that the soldiers at Fort Campbell are the "best we have ever had," that they are "intolerant of abuse of anybody for any reason," and that "leaders" at Fort Campbell "set the example through word and deed." He concludes with this sentence:

This is the climate that exists at Fort Campbell, in contrast to which you have seen on TV and in the papers during these past few months.

This tone has characterized much of General Clark's public statements during the remainder of his command at Fort Campbell. On June 9, 2000, he said at a news conference that he objects:

in the strongest terms to the way our soldiers, and the climate that embraces them, have been characterized.

At a Rotary Club meeting in March 2000—another event listed by General Clark as an example of his efforts to address anti-gay harassment—press reports, say that he:

used the Rotary speech to lambaste the *Kentucky New Era* and other area newspapers for printing an earlier story on his refusal to allow Servicemembers Legal Defense Network to place an advertisement in the post newspaper.

The ad had listed an anonymous hotline number for the Army inspector general's office and the telephone number for the organization. General Clark justified his decision to reject the ad on the ground that the inspector general's office had all the access it needed to soldiers on post. Newspaper reports of General Clark's Rotary Club speech contained no mention of any statement condemning anti-gay harassment.

I have repeatedly asked the Department to investigate this issue further, to find out whether in fact General Clark made any statements specifically addressing anti-gay harassment and anti-gay violence following the

Winchell murder. But the responses of the Department have been inadequate.

In response to similar questions by the parents, the inspector general stated:

During the 6 months following the murder, Major General Clark was personally involved in talking to Commanders at all levels about the anti-gay harassment.

There have been other cases where commanding officers have had to respond to tragedies, and they have done so in a variety of ways that demonstrate their leadership.

Many have drawn comparisons between General Clark's response in this case and General John Keane's response to the murder of African American civilians at Fort Bragg by racist soldiers. After these murders, General Keane held a 1-year anniversary remembrance and publicly offered his condolences. He met with the NAACP and the Anti-Defamation League to discuss the murders and consider ways to improve the racial climate.

General Keane offered very strong public statements against racism, and he implemented sensitivity training on the base. General Clark did none of this.

In all the services, discrimination against gays is codified in the ban on their service in military. In reporting anti-gay discrimination, soldiers face potential investigation, further harassment, and even discharge. This makes this population even more vulnerable to acts of harassment and violence, which makes it even more essential for leaders to act quickly and effectively in response to attacks on soldiers perceived to be gay.

In the recent controversy at the Air Force Academy, the senior leadership has been held accountable, from the Commandant of the Academy, to the Secretary of the Air Force. The Commandant of the Air Force Academy has been held responsible for the shortcomings of his subordinate commanders.

General Clark never held a single officer responsible for the command climate that led to the murder of Private Winchell. General Clark did not take responsibility for addressing the problem of anti-gay harassment at Fort Campbell after the murder. He should bear the ultimate responsibility for the climate that led to this tragedy and for not remedying that climate afterwards.

These are important questions that go to the heart of this officer's suitability for promotion to lieutenant general. The Senate deserves better information acting on such a controversial nomination.

I will just review for a few moments the difference between Fort Bragg and Fort Campbell. This is the difference, the comparison between General Keane's response to the murder of two African-American civilians and General Clark's response to the murder of PVT Barry Winchell. Fort Bragg:

In December 1995, three White Fort Bragg soldiers murdered two Black North Carolina

civilians. Then Fort Bragg commanding general, LTG John Keane, currently General Keane, did the following actions after the murder:

At Fort Bragg, an on-base memorial service for "remembrance and reconciliation" was held 1 year after the murders. Lieutenant General Keane publicly communicated strong condolences.

On General Clark's actions after the murder, he declined to meet with the Winchell family, did not attend the Winchells' on-base memorial service held shortly following the murder, and did not hold any subsequent memorial events.

LTG John Keane invited the NAACP and the ADL to discuss the murders and work with the base to improve the racial climate. The local NAACP leader, James Florence, on the NAACP's relationship with Fort Bragg, said:

Since [the murders] we have had a liaison with Fort Bragg. We can talk with them almost any time we need.

General Clark declined to meet with the gay groups, declined to meet with the legal defense funds, and declined to meet with gay veterans organizations.

There is a dramatic difference between two commanding officers and how they dealt with the hate crimes. General Keane's response to the soldiers after the murders? LTG John Keane and the Army launched an aggressive program to "weed skinheads and extremists out of the military." General Keane said:

We did not see this cancer coming. We missed the signs, symbols, and manifestations of extremism.

General Keane implemented sensitivity training at Fort Bragg regarding race relations. He said:

We've educated our people, in terms of what to look for and how to deal with it, and when we find soldiers whose attitudes and behavior are disruptive to good order and discipline of our unit, we are going to act.

General Clark publicly stated there was not a climate of homophobia on Fort Campbell, did not make any public statements or issue any written directives and never publicly communicated an appreciation of the harm caused by the antigay murder.

There are dramatic differences between how an officer dealt with this, who continues to serve with great distinction in our service, and the nominee.

Finally, here is the comparison between General Clark's response to the murder of PVT Barry Winchell and the response of the Air Force Academy leaders on sexual assaults. At the Air Force Academy during the period of 1993 through 2003, 60 cases of sexual assault were reported. Earlier this year, LTG John Dallager, the academy commandant from 2000 to 2003, lost his third star and retired as a major general because the Secretary of the Air Force determined he "did not exercise the degree of leadership in this situation that we expect of our commanders."

In September 2003, an independent panel commissioned to review the cli-

mate situation issued a report supporting the demotion of General Dallager and recommending an additional review to assess the actions taken by other leaders and holding individuals accountable.

On General Clark, in July 1999, two Fort Campbell soldiers murdered Barry Winchell because they believed him to be gay. This murder occurred on the base, in the barracks. This murder and additional problems with antigay harassment occurred during the tenure of Commander Clark and there has been no response.

My final point on the ultimate responsibility:

General Dallager is the Academy leader—[this was the finding]—bearing ultimate responsibility for the failure to adequately respond to sexual assault issues.

The Panel concurs with the decision . . . to retire General Dallager. . . .

Retire him.

On the ultimate responsibility, Army leadership doctrine states that commanders:

. . . have to answer for how their subordinates live and what they do after work.

That is in the field manual.

In a July 19, 2000 article in the New York Times, General Clark stated:

There is no, nor has there ever been during my times here, a climate of homophobia on post.

General Shinseki, on July 21, 2000, stated in a DoD News Briefing:

We take full responsibility for what happened to Private Winchell. . . .

There is General Shinseki taking responsibility. There is a general.

We take full responsibility for what happened to Private Winchell.

General Clark has failed to accept similar responsibility in this case and doesn't deserve the promotion.

On another matter, I believe there is some remaining time.

Mr. WARNER. Mr. President, I was going to reply to some of the points my colleague from Massachusetts made. As you well know, the General—

Mr. KENNEDY. May I reserve the remainder of my time? Is this on the Senator's time?

Mr. WARNER. Yes.

Mr. KENNEDY. Since I had the floor, I want this additional comment I would like to make on another subject, but I also want to respond to the questions of the Senator, so I will be glad to do whatever you would like.

Mr. WARNER. Mr. President, parliamentary question: We are on this nomination with 2 hours of debate and 1 hour each divided equally. I manage this side and Senator KENNEDY manages that side. If the Senator wishes to go on to another matter, I am not sure how the Senator wishes to handle this.

Mr. KENNEDY. Mr. President, it is not difficult, I think, since I have 40 minutes. I will use my remaining time and ask that my comments be inserted into another part of the RECORD so it doesn't interfere, and then I will be glad to answer any questions of the Senator.

Mr. WARNER. Mr. President, I wonder if the Senator from Massachusetts will accommodate the Senator from Virginia. I would like to make some comments with respect to his important remarks while they are fresh in the minds of the listeners. I think it is appropriate that I take a little time. Then, as far as I am concerned, we will both yield back our time and the Senator from Massachusetts can take some time on another matter, if he wishes. Is that helpful?

Mr. KENNEDY. How long did the Senator plan to speak?

Mr. WARNER. I will summarize my comments in about 5 or 6 minutes, at the conclusion of which we could both yield our time.

Mr. KENNEDY. Mr. President, if the Senator wants to address the Senate first, Senator DAYTON was yielded 15 minutes.

Mr. WARNER. That is under the order. I didn't realize he just walked in the Chamber. I am trying to do the best I can to accommodate everybody and manage the time efficiently. But I do desire at this point in time an opportunity to reply to my colleague from Massachusetts.

Mr. KENNEDY. Mr. President, I will yield the floor for that purpose and ask unanimous consent that at the conclusion I be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, the Senate had a comparison between how General Keane and General Clark handled problems within their respective commands. General Clark was the convening authority, and the tragedy that occurred to which the Senator referred, and which is the subject of some comments here today, came up through the military command, was handled by the military courts and the military authorities, and adjudicated. As the convening authority, I think he took some prudent steps to make certain that in no way could he be accused of command influence. The tragedy in General Keane's command was tried in the civilian courts, and as such he was not the convening authority. He then had the opportunity to do some things which I believe General Clark did not.

Out of this tragedy, there were lessons learned in the Army. I think some important new policy matters were put into the regulations. Otherwise, not all was lost in this tragic situation.

I ask unanimous consent to have printed in the RECORD the Army Inspector General's Report on Fort Campbell at the conclusion of my remarks. That is the first section of it that addresses a number of points that are raised by the Senator from Massachusetts.

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit 1.)

Mr. WARNER. Mr. President, I believe from reading this report—not in the words of the Senator from Massachusetts that no one was trying to stop

these tragic situations—that it was generally a positive command climate. There were some isolated instances of harassment, sexual in nature. I concede that is in the RECORD. But the total quantity of these incidents, in my judgment, was not indicative of a breakdown in the command responsibilities under General Clark.

General Clark, as I said, came to the committee on two occasions and subjected himself quite willingly—indeed, under oath; I put him under oath at the second hearing—and he responded to the cross-examination, much of which the distinguished colleague from Massachusetts has raised today.

In conclusion, he has an extremely impressive record of military service stretching back to 1970. Much of that has been covered by my colleague from Kentucky.

Mind you, Fort Campbell is an installation that can at times host a daily population of 24,000 military personnel and over 200 company-sized units.

In July of 1999, this brutal murder was committed at Fort Campbell by an intoxicated 18-year-old soldier who used frightful force against PFC Barry Winchell. This resulted in his death, allegedly while he was sleeping. No one underestimates the seriousness of this crime.

Senator LEVIN and I met in May of this year with the parents of Private First Class Winchell. Like General Clark, we extended our sympathy and sorrow for their loss. The committee listened very closely to the assertions they made about a lack of appropriate treatment by General Clark and shortfalls in discipline and a secure environment at Fort Campbell during the time their son was stationed there.

At the conclusion of the meeting, Senator LEVIN and I asked Private First Class Winchell's parents to put the questions and concerns they had raised with us at that meeting in a letter, and we would obtain answers from the Department of Defense—specifically, the Department of the Army—and share those answers with them. That we did. The parents sent us a letter and Senator LEVIN and I forwarded these questions to the Department. In September, the Department responded to questions and expressed continued support for Major General Clark's nomination.

I ask unanimous consent that all of these matters be printed in the RECORD at the end of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. WARNER. Mr. President, not only the steps taken by the Armed Services Committee, together with my distinguished colleague Senator LEVIN, but indeed by the Department of the Army into other areas overall reflect, I think, that our committee carefully looked into this matter and that the Department of the Army was responsive to the questions raised by my colleagues.

Mr. President, MG Clark is highly qualified for promotion to the rank of lieutenant general assignment as Commander of the Fifth United States Army. He was first nominated for this position in the fall of 2002. He has appeared before the Senate Armed Services Committee in executive session on two separate occasions, and, on both occasions conducted himself with deference and respect for the members of the committee, and with appreciation for the Constitutionally-based advice and consent power—and responsibility—of the Senate. Not surprisingly, General Clark has the full support of the Chief of Staff of the Army, General Schoomaker, and the civilian leadership of the Army for this promotion.

General Clark has an extremely impressive record of military service stretching back to his commissioning in 1970. General Clark's military record includes combat service in Viet Nam for which he was awarded the Bronze Star with Combat "V." He has served as a Battalion Commander and a Brigade Commander with the renowned "Screaming Eagles" of the 101st Airborne Division. In this capacity, he participated in Operations Desert Shield and Desert Storm. Major General Clark later served as Chief of Staff for the 101st Airborne Division, and from 1998 through 2000 as Commanding General of the 101st Airborne Division and Fort Campbell, KY.

Fort Campbell is an installation that can, at times, host a daily population of over 24,000 military personnel and over 200 company sized units. In July 1999, a brutal murder was committed at Fort Campbell by a drunken, 18-year-old soldier who bludgeoned Private First Class Barry Winchell to death in his sleep. This tragic and senseless crime was not foreseeable—not foreseeable by PFC Winchell's company commander and certainly not foreseeable by Major General Clark. General Clark capably and competently fulfilled his responsibility as General court-Martial convening authority in this murder trial and took steps necessary to ensure that the perpetrator of this crime and an accomplice were brought to justice. This was accomplished and the soldier who murdered PFC Winchell is serving a life sentence.

Senator LEVIN and I met in May of this year with the parents of PFC Winchell. We, like General Clark, extended our sympathy and sorrow for their loss. As leaders of the committee, we listened very closely to the assertions they made about a lack of appropriate treatment by General Clark, and shortfalls in discipline and a secure environment at Fort Campbell during the time their son was stationed there.

At the conclusion of our meeting, Senator LEVIN and I asked PFC Winchell's parents to put the questions and concerns that they had raised with us in a letter, and we would obtain answers from the department and share those answer with them. The parents did so, and we sent their questions to the department in June.

In late September, the department responded to the questions, and expressed continued support for Major General Clark's nomination. The Army undertook to conduct inquiries through the Army Inspector General in response to the questions raised by the parents, and, I believe, did respond fully to the issues that were raised.

In late September, Senator LEVIN and I forwarded the Department's response to PFC Winchell's parents inviting them to respond. They did so on October 8th. On October 10, Senator LEVIN and I forwarded their letter to the department together with additional questions from Senator KENNEDY requesting comment. We received a response from secretary Abell and Acting Secretary Brownlee on October 21st and, shortly thereafter, we conducted our second executive session.

The committee compiled a very thorough record about all the issues raised by Senator KENNEDY and others. I will not go into specific details, but it is important to note that the Army Inspector General conducted an investigation into the circumstances surrounding the July 1999 death of PFC Winchell after the court-martial was completed, and the IG found no basis to support accusations of dereliction of duty and failure of leadership by General Clark. To the contrary, the investigation found a positive command climate at Fort Campbell and refuted the assertions that Major General Clark should have done more or could have prevented this tragedy.

I am very concerned about ensuring accountability of military officers, and I have insisted at looking very closely at the actions of military leaders who are entrusted with command. I am satisfied that General Clark did not fail in his command responsibility and is fully deserving of promotion. I urge my colleagues to support this nomination.

EXHIBIT I  
EXECUTIVE SUMMARY

*Background*

On 5 July 1999, Private First Class (PFC) Barry Winchell, D Company, 2nd Battalion, 502nd Infantry Regiment, Fort Campbell, Kentucky, was murdered by a fellow soldier. Following this incident, and amid claims that PFC Winchell was murdered because he was or was perceived to be a homosexual, allegations arose concerning the command climate at Fort Campbell particularly as it related to the command's enforcement of the Department of Defense (DOD) Homosexual Conduct Policy [hereinafter the Policy]. The Army pledged early on to assess the command climate and investigate the alleged violations of the Policy; however, to avoid interfering in the individual judicial proceedings underway, the Army could not begin that effort until the conclusion of the two courts-martial arising out of PFC Winchell's death.

On 10 January 2000, the Secretary of the Army (SA) directed that the Department of the Army Inspector General (DAIG) conduct an investigation into the facts and circumstances surrounding the death of PFC Winchell as it related to the Policy (enclosed) [hereinafter referred to as directive]. In addition, the DAIG was tasked to conduct an assessment of the command climate then

existing in PFC Winchell's unit prior to his death and an overall assessment of the command climate existing at Fort Campbell prior to PFC Winchell's death, specifically as it related to the Policy. Finally, the DAIG was directed to provide an overall assessment of the Department of the Army's (DA) implementation of the Policy. The Fort Campbell assessment provided the initial data for the Army assessment of the Policy. The Army IG will continue to assess these issues as part of their continuing inspection program.

*Task Force Composition, Training, and Methodology*

A Task Force of 27 individuals was established to conduct the investigation and assessment in accordance with the directive. The Task Force was composed of inspectors general (IGs), one legal advisor, and subject matter experts. During early February, the Task Force received training from the subject matter experts in the areas of the Policy itself, Equal Opportunity (EO), interview techniques, and group dynamics. Further, the Task Force conducted mock individual interviews and group sensing sessions in order to validate the assessment strategy. Finally, at the request of the Servicemembers Legal Defense Network (SLDN), key leaders of the Task Force met with representatives of the SLDN to identify specific concerns of the organization. The SLDN is a national legal aid organization that assists soldiers affected by the Policy.

The scope of the assessment included the following: Interviews with the commanding general, 101st Airborne Division (Air Assault), both assistant division commanders who were occupying those positions in July 1999, and interviews with 47 brigade and battalion-level commanders from both divisional and nondivisional tenant units. In addition, the Task Force conducted 68 sensing sessions composed of soldiers randomly-selected by utilizing the last two digits of the social security number. In these sessions, 588 soldiers were interviewed and 1,385 command climate surveys were administered throughout Fort Campbell. With respect to the sensing sessions, it should be noted that all of these soldiers were assigned to Fort Campbell from the period of April 1999 through February 2000. In addition, participants who completed a command climate survey were informed that the responses would be anonymous.

In addition to interviews conducted on Fort Campbell, the investigation team conducted on-site interviews at Fort Benning and Fort Leonard Wood, as well as telephonic interviews with soldiers assigned to Korea, Fort Drum, Fort Knox, Fort Jackson and the United States Military Academy. Civilian members of the Fort Campbell community as well as former members of the Army were also interviewed by the investigation team.

Finally, Task Force members gathered relevant data through on-site inspections and additional periodic spot checks of unit recreation centers, public use areas, and barracks living areas. Finally, the Task Force secured information by directly observing on-post soldier events to include physical fitness training sessions.

*History and Background of the Policy*

On 29 January 1993, the President directed the Secretary of Defense (SecDef) to review DOD policy on homosexuals in the military. On 19 July 1993, the SecDef directed the following: applicants for military service as well as current servicemembers would not be asked nor required to reveal their sexual orientation; sexual orientation would not be a bar to entry into the service or continued service unless manifested by homosexual

conduct; and commanders and investigating agencies would not initiate investigation solely to determine a member's sexual orientation. On 30 November 1993, Congress enacted 10 United States Code (USC), Section 654, policy concerning homosexuality in the armed forces.

ASSESSMENT RESULTS

*Finding 1*

Objective: Examine alleged violations of the DOD Homosexual Conduct Policy during the period preceding PFC Winchell's death.

Findings: 1. A preponderance of evidence indicated that two noncommissioned officers (NCOs) in PFC Winchell's chain of command and a fellow private (PVT) inquired into PFC Winchell's sexual orientation. In addition, at least one NCO referred to PFC Winchell as a "faggot."

2. In spite of this, however, the evidence gathered demonstrated that the chain of command was proactive in terminating the sporadic incidents of derogatory or offensive cadences during unit marches and physical training (PT) formations.

Summary: Evidence obtained from Fort Campbell indicated that in late May 1999 PFC Winchell asked an NCO from his unit, D Company, 2nd Battalion, 502nd Infantry Regiment, "What would happen if a guy in the military was gay?" In responding to that question, the NCO asked PFC Winchell if he was a homosexual. Testimony revealed that the NCO asked the question in an effort to offer assistance to PFC Winchell in getting professional guidance or assistance in addressing the issue.

Evidence gathered indicated that an NCO in PFC Winchell's unit referred to PFC Winchell as well as other members of the unit as "faggots" in describing those who failed to perform to his standards. On one occasion, the NCO referred to PFC Winchell as a "faggot" after PFC Winchell reported to work in what appeared to be an intoxicated state.

The preponderance of evidence demonstrated that PFC Winchell's chain of command did not condone demeaning or derogatory cadences made during the conduct of unit PT. In those instances where inappropriate remarks were made, company leaders made on-the-spot corrections.

*Finding 2*

Objective: Determine whether the local IG's office responded appropriately to any complaints of violations of the DOD Policy it may have received prior to PFC Winchell's death.

Findings: The Fort Campbell IG office properly responded to the only known complaint of a violation of the Policy prior to 5 July 1999 when they followed standard Army IG guidance by recommending PFC Winchell provide his commanders the opportunity to resolve his complaint prior to direct IG intervention with the command.

Summary: Immediately after the NCO called PFC Winchell a "faggot," another NCO escorted PFC Winchell to the IG office to file a complaint. Upon being advised that he should provide his commander the first opportunity to address the issue, PFC Winchell was then escorted to his company commander. Evidence obtained indicated that the company commander counseled the NCO regarding his inappropriate remarks.

*Finding 3*

Objectives: 1. Conduct an overall assessment of the command climate existing at Fort Campbell prior to 5 July 1999, specifically as it relates to the application and enforcement of the DOD Policy.

2. Assess the degree to which PFC Winchell's chain of command understood the application and enforcement of the DOD Policy.

3. Conduct sensing sessions with randomly-selected members at Fort Campbell to determine the degree to which members felt they understood the Policy and the degree to which the Policy was being enforced.

4. Assess the command climate of D Company, 2nd Battalion, 502nd Infantry Regiment before 5 July 1999.

Findings: 1. Through sensing sessions, interviews, and surveys across Fort Campbell, it was determined that the command climate at Fort Campbell before 5 July 1999 was a positive environment with exceptions related to medical support, on- and off-post housing, after-duty-hours recreation, and shortages of personnel in authorized grades. Most soldiers indicated satisfaction with their mission, training, and organizational leadership.

2. With respect to the Policy, it was clear that the chain of command, from commanding general (CG) through company leaders, responded appropriately to matters with respect to enforcement of the Policy.

3. The specific assessment of D Company, 2nd Battalion, 502nd Infantry Regiment's command climate prior to 5 July 1999 was determined to be poor due primarily to leadership failure of a senior NCO, perceptions pertaining to underage drinking, and other factors beyond the direct control of the company, such as shortages of personnel in authorized grades and quality of life (QOL) issues.

Summary: In evaluating the overall command climate at Fort Campbell, personnel were asked to compare the command climate as it existed in February 2000 with the command climate the year prior. Overall, personnel indicated that the command climate was favorable. The majority of personnel questioned believed that the leadership at Fort Campbell was effective and concerned and treated personnel favorably. In addition, the majority of personnel questioned felt that the chain of command responded appropriately to issues presented to them. Finally, personnel believed that the leadership led by example.

QOL issues contributed to low morale at Fort Campbell. Specifically, issues relating to the conditions in the barracks, problems associated with medical care at Fort Campbell, and treatment received by soldiers from the civilian employees and individuals in the surrounding civilian communities were the major areas of concern to those questioned.

In general, the application and enforcement of the Policy did not appear to be a problem at Fort Campbell. Most leaders took appropriate action in instances where application of the Policy was warranted and appeared to be operating well within the confines of the Policy. Soldiers acknowledged, however, that the joking and bantering that had occurred prior to July 1999 on a regular basis could be viewed as harassment. Following training on the Policy and Consideration of Others (COO), soldiers are now more apt to reconsider uttering phrases that would likely be considered harassment.

However, the command climate of D Company, 2nd Battalion, 502nd Infantry Regiment, in the period prior to PFC Winchell's murder was poor. In addition to the QOL issues identified above, soldiers in PFC Winchell's unit believed that personnel shortages and underage drinking in the barracks to the poor command climate. The most significant factor contributing to the poor command climate, however, was the presence of an abusive NCO in a leadership position in the unit.

#### Finding 4

Objective: Review and resolve allegations by Private Second Class (PV2) Javier Torres and others of specific violations of the Policy.

Summary of Findings: The preponderance of evidence did not support PV2 Torres' allegation that he was personally harassed at Fort Campbell; however, evidence does support his allegation of routine personal harassment at Fort Benning and occasional personal harassment at Fort Knox. The preponderance of evidence supported PV2 Torres' allegations that during initial entry training (IET) at Fort Benning, one drill sergeant improperly addressed or referred to him as a homosexual, and another PVT provoked a fight with him by routinely taunting him and referring to him as a homosexual. The evidence also supported PV2 Torres' allegation that at Fort Campbell a senior NCO improperly used terms derogatory to homosexuals while trying to motivate male soldiers to perform to standard and two NCOs improperly used terms derogatory to homosexuals while singing cadences during a physical training run. It did not support his allegations that an NCO in his unit at Fort Campbell improperly used anti-homosexual language while conducting training on the Homosexual Conduct Policy, that a soldier at Fort Knox improperly inquired into his sexual orientation, and that an NCO in his unit at Fort Campbell improperly inquired into his sexual orientation.

The preponderance of evidence supported allegations that an NCO at Fort Campbell read a joke to soldiers that was demeaning to homosexuals; anti-homosexual graffiti was present on a wall of a latrine in a unit area, a latrine in a public recreation area, and a latrine in a work area at Fort Campbell; and a nongovernmental civilian, not a soldier, sent an e-mail containing anti-homosexual language to a former soldier at Fort Campbell. The preponderance of evidence did not support allegations that anti-homosexual comments made by soldiers at Fort Campbell were the "norm," soldiers made threatening and inappropriate comments during training on the Policy, an e-mail with a sound wave file attached that contained language demeaning to homosexuals was circulated at Fort Campbell, and an NCO's chain of command improperly inquired into his sexual orientation.

#### Finding 5

Objectives: 1. Assess the degree to which PFC Winchell's chain of command understood the application and enforcement of the Policy.

2. Conduct an overall assessment of the command climate that existed then at Fort Campbell, specifically as it relates to the application, enforcement, and training conducted on the Homosexual Conduct Policy.

3. Conduct sensing sessions with randomly-selected military members at Fort Campbell to determine the degree to which members felt they understood the Policy and the degree to which they believed the Policy was being enforced.

Finding: There was no sustainment training conducted at Fort Campbell on the Policy before 5 July 1999 because there was no clearly articulated requirement on how often personnel were to be trained and who was to receive the training. The published guidance indicated: "All officers and enlisted personnel of the Active Army and Reserve Components will receive briefings upon entry and periodically thereafter." Institutional training of personnel on the implementation and enforcement of the Policy was ineffective. Most officers, NCOs, and soldiers at Fort Campbell lacked an understanding and working knowledge of the Policy prior to 5 July 1999.

Summary: Nearly all soldiers, NCOs, and officers at Fort Campbell had received training on the Policy at some point in their military career. The training that was con-

ducted, however, did not contribute meaningfully to an understanding or working knowledge of the Policy.

As a result, most personnel did not demonstrate a clear understanding of their responsibilities under the Policy and the standards contained within the Policy.

#### Finding 6

Objective: Assess whether current training materials adequately convey the substance of the Policy.

Findings: 1. Currently, commanders, leaders, and soldiers at Fort Campbell do not have a clear understanding of the Policy because training and informational materials do not adequately convey the substance of the Policy.

2. Training and informational guidance contain key words (Don't Ask, Don't Tell) that are not defined in doctrine.

Summary: Based on interviews with commanders, leaders, and soldiers, the results of the command climate survey, and a review of records and files at Fort Campbell, it was determined that the training provided on the Policy is not clearly written, not tailored to specific audiences based on rank and duty positions, fails to adequately convey the substance of the Policy, and is presented in a format which does not foster open and meaningful discussion on the issues.

Informational materials distributed to Army personnel, to include a Hot Topics pullout in Soldiers Magazine and a trifold pamphlet, suffered from the same defects according to personnel. The use of the terms "Don't Ask" and "Don't Tell" in the informational materials without providing definitions to explain these phrases created a large amount of anxiety and confusion.

#### Finding 7

Objective: Provide an overall assessment of the DA's implementation of the DOD Policy by assessing:

1. Whether the Policy is being fairly applied within units.

2. Whether there are currently any other perceived deficiencies in the Policy which preclude effective training, application, and enforcement of the Policy.

Findings: 1. The Policy is being fairly applied at Fort Campbell; however, the Policy with respect to discharges and substantial investigations is not being implemented as intended because commanders perceive an unacceptable risk to the unit and soldier by retaining soldiers who make admissions of homosexuality.

2. Commanders have difficulty in balancing their responsibility to maintain morale, unit cohesion, good order, and discipline while enforcing the Policy. They perceive that the current implementing instructions restrain their latitude to conduct inquiries and preclude them from exercising reasonable discretion in initiating inquiries.

3. AR 600-20 and subsequent Army guidance and messages regarding the reporting of harassment based on homosexual orientation do not adequately advise soldiers where or how to report harassment, and do not adequately advise commanders and agencies how to process these complaints.

Summary: The Task Force determined that the Policy was being fairly applied by commanders at Fort Campbell. The soldiers discharged under Chapter 15 were overall satisfied with their treatment during the process. The Fort Campbell commanders expressed concern in complying with the Policy. They believe it places them in a professional dilemma by requiring them to choose between retention of a soldier who declares a propensity for homosexual conduct and discharge when the truthfulness of his statement of homosexuality is suspect. They are

reluctant to conduct inquiries of the truthfulness of an admission because of the perceived risk to both the unit and the individual soldier.

Commanders stated to the Task Force that they had difficulty in balancing the enforcement of the Policy and the requirement to maintain morale, unit cohesion, good order, and discipline. Commanders expressed concerns that the Policy precludes them from conducting an inquiry when presented with credible information of behavior that demonstrates a soldier may have a propensity to engage in homosexual conduct. They believe the Policy precludes them from exercising reasonable discretion in determining the necessity to conduct an inquiry.

Information gathered by the Task Force determined that guidance on reporting harassment based on sexual orientation by soldiers and investigation into such harassment by leaders is unclear and confusing. Soldiers and leaders expressed frustration with knowing how and to whom to report harassment and how to handle incidents of this type of harassment. They expressed the belief that all harassment should be dealt with uniformly.

In summary commanders and leaders at all levels have an inherent responsibility for establishing a command climate that promotes good order and discipline essential to accomplishing the Army's mission. This responsibility includes promoting unit cohesion by identifying and eliminating harassment before it occurs or results in reports of violations of Army Standards.

#### EXHIBIT II

OFFICE OF THE UNDER SECRETARY  
OF DEFENSE

Washington, DC, March 11, 2003.

Hon. JOHN W. WARNER,  
Chairman, Committee on Armed Services, U.S.  
Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing in reference to the nomination of Major General Robert T. Clark, United States Army, for appointment to the grade of lieutenant general and for assignment as Commanding General, Fifth United States Army that the President recently sent to the Senate. The President previously forwarded Major General Clark's nomination to the Senate on September 10, 2002; however, his nomination was not acted upon by the Senate prior to the Senate's sine die adjournment on November 22, 2002.

The Secretary of Defense considered reported information concerning Major General Clark. Major General Clark was in command of the 101st Airborne Division (Air Assault) and Fort Campbell at the time Private First Class Barry Winchell, a member of the command who was perceived to be homosexual, was murdered in his barracks by another member of the command. The Department of the Army Inspector General conducted an investigation into the facts and circumstances surrounding the death of Private First Class Winchell and the Inspector General conducted a command climate assessment at Fort Campbell. Neither the investigation nor the command climate assessment determined that Major General Clark was culpable. We previously provided you with a copy of the Department of the Army Inspector General's Report and this incident was addressed in detail at an Executive Session of the Senate Armed Services Committee in the 107th Congress.

I have attached a copy of the following information for your consideration: chronology of the actions and initiatives taken by the Department of Defense and the Department of the Army immediately following the death of Private First Class Winchell; a detailed chronology of published

policies and actions of the dignity and respect for all soldiers directed by Major General Clark while serving as the Commanding General of the 101st Airborne Division and Fort Campbell; and a list of initiatives implemented by Major General Clark with respect to Homosexual Conduct Policy subsequent to the death of Private first Class Winchell.

After careful review of all information, the Secretary of Defense and the Secretary of the Army continued to support Major General Clark for appointment to the grade of lieutenant general and for assignment as Commanding General, Fifth United States Army. When considered in light of Major General Clark's past performance and future potential, we believe proceeding with the nomination is clearly in the best interest of the Department of the Army and the Department of Defense.

The Department appreciates your assistance in facilitating the confirmation of pending nominations.

Sincerely,

CHARLES S. ABELL,  
Principal Deputy.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, first of all, I thank the chairman of the committee, Senator WARNER, for all of his courtesies during the consideration of this nominee. I mentioned during my comments that we wanted to get additional answers. He has been extremely accommodating to those of us who raised the questions, as he always is as the chairman of the committee. I thank him for his fairness and ensuring that all of those who had concerns were able to conduct our concerns in accordance with the rules. I thank him very much for all of his courtesies.

Mr. WARNER. I thank my colleague.

Mr. KENNEDY. Senator BUNNING I know has a great interest in this. I thank him also.

I will address the Senate briefly on another matter which is of importance and consequence to the Senate. Then I will yield the time because I know my colleague wants to address this issue. Then we will be prepared to move to a vote.

How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 17 minutes of the 40 minutes.

Mr. KENNEDY. I thank the Chair. If you would let me know when 15 minutes have been used, I would appreciate it.

#### CONFERENCE REPORT ON MEDICARE

Mr. President, in a very few days we are going to be confronted with the conference report on Medicare. There is no more important issue facing the Congress and no more important issue to senior citizens and their families. Every senior citizen, every child of senior citizens, and every American should understand that this legislation must be defeated or drastically modified.

This conference report represents a right-wing agenda to privatize Medicare and to force senior citizens into HMOs and private insurance plans. The day it is implemented, it will make millions of seniors worse off than they are today. It is a cynical attempt to

use the elderly and the disabled's need for affordable prescription drugs as a Trojan horse to destroy the program on which they have relied for 40 years.

It is important to understand how we got to this point.

First of all, we all understand that Medicare is one of the most beloved programs this Nation has ever enacted. It is depended upon by seniors all over this country. It is a program which is relied on and depended upon, and it works. If there is a failure in the Medicare Program, it was not to have included a prescription drug program in the legislation we passed.

That really is not what this current conference report is all about. This conference report is going to threaten Medicare in a very significant and important way—in a way that those of us who believe in Medicare should not permit.

We started in the Senate with a bipartisan bill to expand the prescription drug coverage. We also provided additional choices to private insurance coverage for senior citizens as the President requested. The bill was not a solution for the problems senior citizens face. It only provided about \$400 billion between now and 2012 toward the prescription costs that will total \$1.8 trillion. But it was a start, a downpayment. It was a fair and balanced compromise that protected Medicare and protected senior citizens. That is why it passed by 76 votes. Only 11 Democrats voted no; only 10 Republicans voted no.

The House took a different course. They passed a bill that was designed to radically alter Medicare, not for the benefit of the elderly. That is why it passed by a slim partisan majority of one vote. Now the conference has been hijacked by those who want to radically alter Medicare, privatize, to voucherize it, to force seniors into HMOs and into private insurance plans.

The bill the Senate will consider shortly is not a bill to provide a prescription drug benefit. It is a bill to carry out the right wing agenda and asks the elderly to swallow unprecedented changes in Medicare in return for a limited and inadequate small prescription drug benefit.

This conference report is so ill-conceived, not only does it put the whole Medicare Program at risk, it makes 9 million seniors, almost a quarter of the Medicare population, worse off than they are today. If this bill passes, the country will want to know: Where was their Senator when the Senate debated a bill that left a quarter of all seniors with worse drug coverage than before the bill passed? Where was their Senator when the Senate debated a so-called premium support demonstration that jacked up senior citizens' premiums—senior citizens who live on a fixed income, who have a median income of about \$14,000—starting us down the road to the unraveling of Medicare? Where was their Senator when the Senate debated a bill that stacked the